



Supporting the Rights of Persecuted Indigenous People

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Introduction

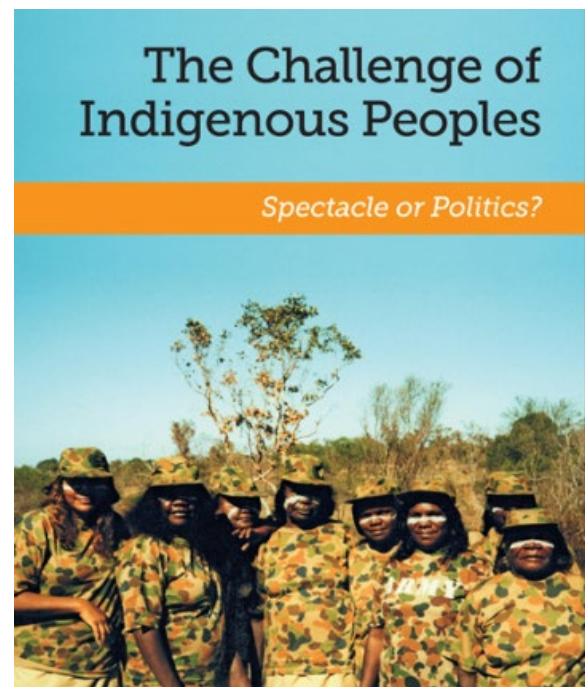
The Member States of the United Nations have agreed to recognize indigenous people as the inheritors and practitioners of unique cultural, social, economic and political practices, which are distinct from those of the dominant societies in which they live.¹ In part due to these differences, today indigenous people remain among the most disadvantaged and vulnerable groups in the world resulting in poverty and displacement.

Current Situation

Due to the differences inherent in indigenous cultures, they are particularly vulnerable to persecution. At present, there are three primary issues faced, in varying degrees, by indigenous groups around the world: social marginalization and poverty, displacement, and climate change.

Systematic marginalization by the state often results in indigenous people filling the bottom rung of society. The effect of this disadvantaged social standing is that, in general, indigenous people suffer from higher rates of poverty, landlessness, malnutrition, illiteracy and have less access to health services. Despite constituting less than four percent of the world's population, indigenous people account for 15 percent of the poorest.² This problem is

widespread through the world. In Latin America, for example, indigenous people make up the poorest demographic in every single Latin American country.³



Displacement in particular has been a long-standing problem for indigenous people. Traditional homelands were often abandoned due to threat of harm from early colonial settlers. Today, the land on which many indigenous live is under threat again as economic and environmental pressures lead to the stripping of

¹ United Nations. "United Nations – Indigenous Peoples." <https://www.un.org/development/desa/indigenouspeoples/about-us.html>.

² Elizabeth Scaffidi. "UN Underscores the Need to Celebrate Indigenous Peoples, Not Confine Them."

UN News. August 10, 2018.

<https://news.un.org/en/story/2018/08/1016762>.

³ First Peoples Worldwide. "The Challenges We Face." <http://www.firstpeoples.org/the-challenges-we-face.htm>.



land resources such as timber, minerals and water.⁴ These changes, which themselves lead to further displacement, upset the delicate ecological balance on which indigenous people depend for their way of life and destroy the cultural heritage of sacred sites.

Recently in Malaysia, for example, large hydroelectric dams have been constructed to meet the water and energy demands of the country's rapidly growing urban population. This construction has displaced indigenous groups without their prior consent. It has destroyed the forests upon which they depend for their survival.⁵ Displacement such as this often results in unemployment and enduring poverty as groups are uprooted. These challenges represent threats to the traditions, cultures, languages, and identities that make indigenous people unique.

Beyond the problems of social marginalization, poverty and displacement, indigenous groups in many regions are also uniquely impacted by climate change. Because the majority of indigenous cultures are closely intertwined with nature and their environment, climate change is likely to disproportionately impact indigenous groups. An example of this disproportionate impact is the current struggle faced by Arctic indigenous groups whose traditional methods of subsistence hunting rely heavily on the use of ice, which is rapidly disappearing.

Similarly, traditional wisdom gathered over generations regarding when to plant crops may cease to be reliable due to the effects of climate change. In northern Kenya, for example, increasingly severe droughts have impacted

traditional pastoralists who survive by herding animals in an already harsh and dry environment. The drought of 2005–2006, led to a 70 percent decline in the size of cattle, goat and camel herds and left 80 percent of pastoralists dependent on international food aid.⁶

Background

Underlying the current issues of social marginalization, displacement and climate change faced by indigenous groups is the shared story of colonization. The threat and intrusion from outsiders are common experiences of indigenous people spanning generations from the past and into the present. In the context of these current issues, indigenous groups are continuing to be socially oppressed and excluded, have land and resources taken from them and are suffering the negative consequences of the dominant cultures in the form of climate change.



⁴ Samuel Ruiz and Alina Rocha Menocal. "The Politics of Marginalization: Poverty and the Rights of the Indigenous People in Mexico." *Journal of International Affairs*, 52, no. 1 (1998): 85-100. <http://www.jstor.org/stable/24357815>.

⁵ Robert S. Aiken and Colin H. Leigh. "Dams and Indigenous Peoples in Malaysia: Development, Displacement and Resettlement." *Geografiska*

Annaler: Series B, Human Geography, vol. 97, no. 1 (2015), pp. 69-93.

⁶ Rachel Baird. "The Impact of Climate Change on Minorities and Indigenous Peoples." *Minority Rights Group International*. https://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Minority_Rights_Group_International.pdf.



Role of the United Nations

While the relationship between the state and its indigenous groups is traditionally within the sovereign rights of Member States, when persecution becomes systematic and indigenous groups face global challenges like climate change, the United Nations has a responsibility to play a role. Indigenous issues fall generally under the UN Human Rights Council (UNHRC).

Although indigenous issues have been present (though peripherally) on the international stage since 1923, the United Nations first began to consider indigenous issues in 1982 with the formation of the Working Group on Indigenous Populations (WGIP). A further spotlight was placed on indigenous issues when 1993 was declared by the UN General Assembly as the Year of the World's Indigenous People which focused on promoting a new relationship between Member States and their indigenous populations based on mutual respect and understanding. This was expanded in 1994 to be the International Decade of the World's Indigenous Peoples. As part of this, UN agencies worked with various indigenous groups to design and implement projects on health, education, housing, development and the environment to promote protection of the traditional customs, values and practices of indigenous peoples.

Since the Decade of the World's Indigenous Peoples, there has been a rapid expansion of UN interest on indigenous issues. In 2000, a Permanent Forum on Indigenous Issues was formed. In 2001, the Commission on Human Rights appointed a Special Rapporteur on the rights of indigenous peoples. In 2005, a second International Decade of the World's Indigenous Peoples was declared to continue and to

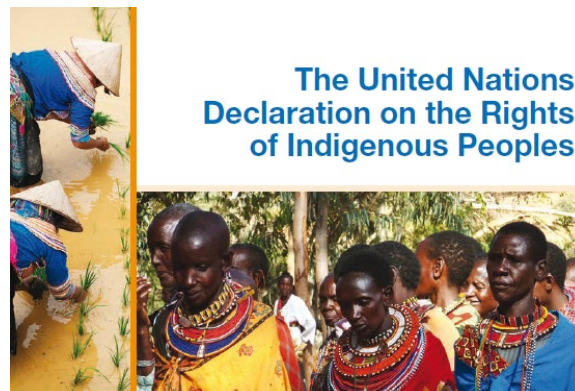
strengthen the work done during the first. One of its chief accomplishments was the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.⁷

Despite these rapid and significant advances of indigenous issues on the international stage, a substantial gap remains between formal recognition of these goals and real implementation on the ground.

United Nations Actions and Resolutions

The increased attention to indigenous issues within the UN has resulted in a number of resolutions and working documents dedicated to the rights of indigenous people.

The most important of these is the *United Nations Declaration of the Rights of Indigenous People* (UNDRIP), passed in 2007 by a vote of 1423 in favor, 4 opposed and 11 officially abstaining. Another 37 Member States failed to participate in the vote.⁸



The United Nations Declaration on the Rights of Indigenous Peoples

⁷ United Nations. "Indigenous Peoples at the UN." <https://www.un.org/development/desa/indigenouspeoples/about-us.html>.

⁸ 'Declaration on the Rights of Indigenous Peoples', n.d., https://en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples



UNDRIP is a political declaration. It is not legally binding.⁹ The document highlights and defines in detail the specific human rights indigenous people are afforded as well as makes recommendations regarding state treatment of these groups. UNDRIP recognizes the historic injustices afforded to indigenous peoples as a result of colonization and displacement of their lands, territories, and resources.¹⁰

UNDRIP set forth the need for *Free and Prior Informed Consent* (FPIC). This principle is meant to guide all actions regarding indigenous people. It defines the right of indigenous peoples to make their own decisions on matters that impact their livelihoods. This is a general universal right of all peoples, but is particularly crucial to indigenous peoples due to the long history of harm caused by decisions imposed on them by others.

The United Nations created Global Compact in 2000, which outlines the fundamental responsibilities of corporations regarding human rights, labor, and the environment. Global Compact explicitly recognizes the rights of indigenous persons to their land.¹¹

In December 2018, the UN General Assembly adopted a new resolution on the Rights of Indigenous Peoples which reaffirmed UN commitment to UNDRIP and the outcome of the 2014 World Conference on Indigenous Peoples.¹² Thus, promoting and protecting the rights of indigenous peoples is clearly within the mandate of the United Nations. Despite this

interest, however, little has been done to translate these values to real world actions.

Perhaps worse than the lack of concrete measure to implement the goals of UNDRIP, several governments refuse to sign or ratify the agreements, and some are even withdrawing the agreements.

Country and Bloc Positions

Issues related to indigenous peoples are controversial everywhere, since they mean laws that favor some people over others, often minorities over majorities. They also may empower indigenous groups over the state, a difficult and often controversial suggestion in many countries, especially those that only recent gained independence themselves.

African Union: The African Union's Commission on Human and Peoples' Rights (ACHPR) created the Working Group on Indigenous Populations in Africa in 2000. The role of this group is to examine the indigenous populations in Africa, study the application of the African Charter on their well-being, and make recommendations for the protection of these indigenous communities under the articles of the charter.¹³ Despite this, Burundi, Kenya and Nigeria all abstained from supporting the passing of the UNDRIP resolution. There has also been difficulty in determining the correct application of the term "indigenous" in the African context as most Native Africans

⁹ The full text is available at 'Resolution 61/295. United Nations Declaration on the Rights of Indigenous Peoples', New York: United Nations, 2007, <http://www.un-documents.net/a61r295.htm>

¹⁰ 'United Nations Declaration on the Rights of Indigenous Peoples', New York: United Nations: <https://www.un.org/development/desa/indigenous-peoples/declaration-on-the-rights-of-indigenous-peoples.html>

¹¹ United Nations Global Compact. <https://www.unglobalcompact.org/>.

¹² United Nations. "Rights of Indigenous Peoples' Resolution Adopted by the 3rd Committee." December 3, 2018.

<https://www.un.org/development/desa/indigenouspeoples/news/2018/12/rights-of-indigenous-peoples/>.

¹³ African Commission on Human and Peoples' Rights. "Working Group on Indigenous Populations/Communities in Africa."

<http://www.achpr.org/mechanisms/indigenous-populations/>.



originated from that continent and are, broadly speaking, indigenous. Instead, the term is understood to mean those communities and cultures who have been marginalized from the dominant state system and whose traditional practices often conflict with the objectives and policies of the government and corporations. The most frequently includes nomadic and hunter-gatherer cultures who do not easily conform to modern societal borders and laws especially in respect to land. Clarification on this has been enhanced in recent years by the formation of the Indigenous Peoples of Africa Co-Ordinating Committee (IPACC).

The ambiguity surrounding the proper use and application of the term “indigenous” raises concerns among African nations regarding the increased potential for ethnic conflict and claims to secession. As such, while the African Union does support the rights of indigenous peoples in principle the actual application of these practices and official recognition of indigenous groups can be controversial.

China: In 2007, China voted for UNDRIP; however, then immediately disavowed obligation under the declaration on the basis that the government recognizes no indigenous peoples in China despite the recognition of 55 ethnic minority groups. This assertion is problematic primarily as it pertains to the issue of Tibet. Debate is ongoing regarding whether Tibet should be considered a national minority (as China insists) or whether it represents an indigenous group with its own unique culture.¹⁴

China’s ethnic minority groups suffer from social marginalization under intense pressure to conform to Han cultural values. This includes

the widespread suppression on minority languages, religions and other cultural practices. Furthermore, there is historical and present-day conflict regarding the expropriation of land from the inhabitants of the Autonomous Region of Inner Mongolia which is inhabited by nomadic groups of culturally distinct people. This marginalization is systematic in nature in that the Chinese government has made official statements regarding its goal of eradicating nomadic herding as a way of life.¹⁵ In addition, the Chinese government regularly imprisons prominent actors of the indigenous and minority communities which threaten the stability and cohesion of the dominant system. Without recognition of these persecuted groups as indigenous, they are not protected under the provisions of UNDRIP.

European Union: The EU has a long history of supporting indigenous rights and, since 2010, designates specific funds annually to facilitate the participation of indigenous groups in UN meetings. This support has supported over 5000 indigenous leaders and 3000 indigenous organizations to participate in UN proceedings related to indigenous issues.¹⁶ Within the EU itself, there are a number of recognized indigenous groups, most notably in its northernmost states such as the Sami people who inhabit Arctic regions. The EU has worked to accommodate the unique needs of its indigenous groups. For example, the EU is facilitating and actively involved in ongoing talks between the Sami, who are traditionally semi-nomadic reindeer herders, and Finland regarding the construction of a railway through their historic lands. Despite Sami concerns environmental impacts to grazing territory and expropriation of land, the EU, along with Finland, have gone to

¹⁴ Michael Davis. “China and the UN Declaration on the Rights of Indigenous Peoples: The Tibetan Case.” May 27, 2014. <https://www.e-ir.info/2014/05/27/china-the-un-declaration-on-the-rights-of-indigenous-peoples-the-tibetan-case/>.

¹⁵ International Working Group for Indigenous Affairs. “China.” <https://www.iwgia.org/en/china>

¹⁶ UNOHCHR. “European Union Backs Indigenous Peoples’ Rights Worldwide.” December 10, 2010. <https://www.ohchr.org/EN/NewsEvents/Pages/EUFundingDoCip.aspx>.



great lengths to hear these concerns and address them fairly before proceeding with the project thereby recognizing the free and informed consent principle of UNDRIP.

Non-Aligned Movement (NAM): The 120 Member States of the NAM, mostly post-colonial states, have supported UN mechanisms relating to the rights of indigenous peoples. But there are limits to MAN support, which is very sensitive to proposals that would reduce their own national sovereignty or control over policy-making. While they generally support the needs of indigenous people, they tend to favor a powerful state and the dominant peoples of their countries.

In 2016, at the NAM summit, Member States agreed to protect the traditional knowledge of indigenous people. India, in particular, has been a strong advocate of Member States establishing their own impartial processes to adjudicate the rights of their respective indigenous peoples on a variety of issues. Bolivia, one of the few countries governed by a President from the indigenous, pre-colonial population, also stands out as a significant advocate for the rights of indigenous peoples and has enshrined the principles of UNDRIP in its national constitution.¹⁷

Russia: In Russia, there are 40 groups officially recognized as indigenous. Although Russia does recognize the basic rights of its indigenous peoples, it does not recognize the principle of Free, Prior and Informed Consent and Russia did abstain from voting on UNDRIP in 2007. In 2015, an important article of Russian legislation which protected indigenous lands from

incursions was revoked. This sparked a number of violations of indigenous peoples' land by businesses and other resource users.¹⁸

Problems regarding the legal status of indigenous lands are likely to increase as Russia begins to expand its resource extraction programs into the north and northeast regions, particularly the Yamal Peninsula, where the large majority of its indigenous peoples live. These oil and gas pipelines cross historic indigenous territories and interrupt reindeer migration paths upon which the semi-nomadic indigenous groups depend. A 2016 report by IWGIA stated that those who have advocated for indigenous rights against the resource extraction companies have been targeted by the government as "foreign agents" and some have even been detained. In 2012, the Russian government shut down its official indigenous rights group RAIPON when the organization began to raise concerns over land expropriation. RAIPON was reinstated the following year, but the Russian government placed a new leader in charge over whom it has tight control.¹⁹

United States: The US has a complex and tragic history with its indigenous population which mainly consist of American Indian tribes and Alaskan Native peoples. This history includes the systematic and violent removal of indigenous from their lands as well as forced cultural assimilation. Today, many indigenous live in small designated reservation often in areas lacking economic resources and on land unwanted by other dominant groups. In 2007 the US voted against the UNDRIP though in 2010 it stated it would consider it as "moral guidance." In 2016, the US finally federally recognized 567

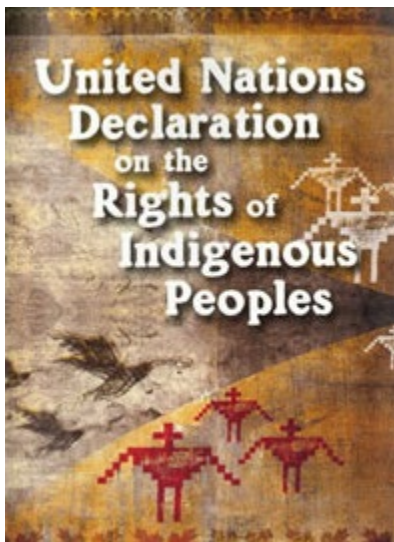
¹⁷ International Institute for Non-Aligned Studies. "NAM Stresses the Importance of the UN Declaration on the Rights of Indigenous People." <https://iins.org/nam-stresses-the-importance-of-un-declaration-on-the-rights-of-indigenous-people/>.

¹⁸ International Working Group for Indigenous Affairs. "Russia." <https://www.iwgia.org/en/russia>

¹⁹ John Thompson. "The Delicate Subject in Northern Russia of Indigenous Rights." April 11, 2017. <https://www.newsdeeply.com/arctic/articles/2017/04/11/the-delicate-subject-in-northern-russia-of-indigenous-rights-2>.



indigenous tribal entities though issues particularly in regard to land rights have persisted. This is especially the case with oil pipelines traversing native lands without their consent as exemplified by the highly publicized Dakota Access Pipeline controversy.²⁰



Proposals for Action

International forums have recognized the rights of indigenous persons, yet they rarely are included in national policy making. While acknowledging their rights is relatively painless for most—but not all governments—action can be expensive and highly controversial everywhere. Most governments favor measures that just offer political support, but leave them free to act as they prefer. But under the right circumstances, they can agree to stronger measures

There is a huge gap between recognition in principle and the actualization of these rights. The seriousness of continued indigenous persecution becomes apparent when noting the

threat of extinction facing many of these groups through the loss of knowledge, culture and land. Furthermore, it remains clear that there persists systematic discrimination and marginalization of indigenous peoples by states. Although the UN's ability to act is limited in regards to actual implementation of the principles stated in UNDRIP, there remains an urgency to continue to do more to ensure Member States are respecting the rights of their indigenous groups. Proposed actions include:

Addressing Dispossession of Indigenous Communities: One of the most pervasive challenges to indigenous people is the dispossession of ancestral land which can significantly impact their cultural identity. Although this is covered, in principle, within UNDRIP, the lack of enforcement mechanisms and incomplete implementation at the state level result in rights violations of indigenous communities. The UN Permanent Forum on Indigenous Issues should specifically address the vast difference between Member States' agreement to UNDRIP in rhetoric versus real world implementation.

Promote the Inclusion of Indigenous Groups on Discussions Regarding Climate Change: Because climate change has an especially great impact on indigenous peoples, it is vital to ensure these groups are represented and included in discussions regarding climate change and other environmental issues.

Continue to Promote Dialogue on Indigenous Issues: Since 1993, the UN has made a significant transition from leaving indigenous issues to Member States to placing them on the international stage. In the past two decades there has been progress towards recognizing the status of indigenous peoples worldwide and creating special protection guidelines within the construct of UNDRIP. This important progress, however,

²⁰ International Working Group for Indigenous Affairs. "USA." <https://www.iwgia.org/en/usa>.



is under attack in some areas and incomplete in others. As a result, it is paramount that the UN continue to consider indigenous issues and to consult indigenous groups on a wide array of topics on which these groups have unique interests and insights.

Develop a Mechanism within the Commission on Human Rights to Monitor Concerns of Indigenous Marginalization: Although UNDRIP is not legally binding, it would be beneficial to develop a body to monitor areas of concern for indigenous groups facing challenges of systematic marginalization such as lack of access to education, healthcare and employment. By monitoring situations of concern and increasing international awareness, there is an opportunity for the UN to pressure states to alter their behavior and advance the principles within UNDRIP.

Focus not on universal principles, but the rights and needs of specific indigenous groups in specific countries: Above all, the Member States of the NAM might agree to recognize the

Palestinian people of the Occupied Palestinian Territories (as they are officially known in the UN) and Arab Residents of Israel as an indigenous group, to be offered specific support by the United Nations. Such a resolution would bring strong opposition from the United States, which only supports Israel, and other countries who would view this as a distraction.

There are other specific peoples that the General Assembly might chose to focus on.